Remarks

An Advisory Action issued in response to Applicant's January 28, 2008 amendment after final. The Advisory indicated a notification date for the Advisory of December 3, 2007 (even though it was actually transmitted in late February). Applicant's representative then received a telephone call from the PTO review branch indicating that the Office had discovered its date error, and was correcting its records accordingly. There was no substantive discussion of the Action during this truncated "interview".

In any event, it appears that the substantive issues of concern have now narrowed considerably. The Advisory Action expressed only what appears to be a continued breadth of enablement concern. The above amendment, and the remarks below, are believed to address this concern.

The Office asserts that the 37kD IkB protein has phosphorylated tyrosine and could be expected to be so prevalent as to prevent Applicant from successfully conducting his method around 37kD. Putting aside the issues of whether the IkB protein survives the method conditions, or how that would affect the test if one were looking for a 37kD fragment of SBP-1, the above amendment now requires the fragment to be "about 55kDa" (per paragraph [0049] of the original specification). Hence, even if the Office were otherwise correct about the presence and interference potential around the 37kD position, the claims have now been narrowed so that should no longer be a concern.

There is nothing of record to indicate the prominent presence in kidneys of another phosphorylated tyrosine peptide of about 55kDa. Regardless, even if the Office were to find such a teaching, it is respectfully asserted that still would not undermine enablement with respect to the amended claims.

Both the specification and the art teach how to make a specific antibody for phosphorylated SBP-1 itself. See original claim 15 and paragraph [0061] of the original specification. Further, note that the Torrealba et al. reference of record by Applicant's lab confirms the ability to generate specific antibodies.

While the specification exemplified the more general anti-phosphotyrosine antibody to detect the "about 55kDa fragment", Applicant also taught at paragraph [0023] developing specific antibodies to the fragment. Hence, Applicant has enabled specificity with respect to at least an about 55kDa fragment of phosphorylated SBP-1.

Apart from this, contrary to the Advisory Action's comment, with respect to the fragment homogenation is required in the claims ("...or to a fragment of the phosphorylated marker protein in the homogenate..."). Hence, apart from the fact that there is nothing of record to support a substantial presence by a conflicting phosphorylated protein fragment of "about 55kDa", whatever else in nature might hypothetically be phosphorylated tyrosine-containing and about 55kDa has been shown in experiments not to survive the homogenation in sufficient quantities to be a problem (see the declaration).

In any event, even if something else in nature had those properties, and survived the method conditions, that wouldn't create a false positive problem (or even a false negative problem). In such a case, both the comparison standard and the test would presumably have the same base level of presence of the hypothetical purported interfering peptide. In a non-rejecting patient, there would then also be the same level of the SBP-1 fragment in both. In a rejecting patient, one would then still see a drop-off (albeit not complete elimination) at the about 55kDa size. The point is that even though something

would remain at the 55kDa point on the gel when a patient is rejecting, it would still appear less prominent when the patient was rejecting.

Hence, even using the Office Action's assumptions, and just the more general anti-phosphotyrosine antibody, the prominent presence of the irrelevant protein wouldn't make a false positive (as presence is indicative of lack of rejection). Further, it wouldn't mask a rejection (to create a false negative) as the relative decrease (as distinguished from total absence) can still indicate rejection.

Of course, that discussion assumes that the best available antibody would be the anti-phosphotyrosine antibody. As noted above, a more specific fragment antibody per paragraph [0023] could visualize only the relevant fragment.

Conclusion

Hence, this application is now believed to be in condition for allowance. No additional fee is believed necessary for the consideration of the enclosed declaration and interview summary. However, if one is, please charge Deposit Account 17-0055 for the needed fees.

Respectfully submitted,

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